

**WAY IS PAVED TO
TAKE**

**CASE OF LEO M.
FRANK**

**BEFORE FEDERAL
COURT**

Through New
Attorneys,

Claim Is Made That
the

Prisoner's
Constitutional
Rights Were
Violated

When He Was Not
Brought Into Court
to

Hear Jury's Verdict.

***DECLARES HIS
LAWYERS***

***HAD NO RIGHT TO
WAIVE***

***HIS PRESENCE
IN COURT***

Judge Ben Hill Fixes
Hear-

ing on Extraordinary
Mo-

tion and on Petition
of the

New Attorneys for Next Wednesday Morning —At- torneys Make Statements.

In event the fight is lost in the courts of Georgia to save the life of Leo M. Frank, the way was paved yesterday to carry his case before the highest tribunal of our land—the United States Supreme Court in Washington.

This was made possible at 10 o'clock Thursday morning, when Attorney John L. Tye, recently employed by Leo Frank, brought out before Judge Ben Hill during the retrial motion proceedings of the defense, the first constitutional rights issue of the Frank case.

Attorney Tye argued that the prisoner was unaware of the action of his attorneys, L. Z. Rosser and Reuben R. Arnold, in waiving his appearance in the courtroom at the time the verdict was rendered last August. He declared that the defendant is constitutionally entitled to being present at such a time, and that counsel had no legal right to waive his presence on counsel's own initiative.

Asks Verdict Set Aside.

Mr. Tye made a motion to set aside the verdict of the court on this particular ground. The motion was filed before Judge Hill, and will be argued next Wednesday morning at 10 o'clock, at which time Judge Hill has set the date for the retrial hearing in his chambers in the old city hall building.

Attorney Tye's motion created a great surprise. The reading of his document preceded the filing of the motion for a new trial by Attorneys Arnold and Rosser, on grounds of newly-discovered evidence.

It was even a surprise that the firm of Tye, Peeples & Jordan had been employed in the Frank defense. Members of Frank's counsel stated Thursday afternoon that this concern had been employed only recently, and that it was brought into the case by Frank himself.

Mr. Tye's motion was based simply on the ground that the law insists that a defendant has not the right—and neither has counsel—to waive his presence at the time of a verdict's announcement. Furthermore, that Frank knew nothing of the action of his lawyers in waiving his presence on the day the verdict of guilty was pronounced.

Stay of Execution.

Following the filing of both motions, Judge Hill ordered a rule nisi served on Solicitor Hugh Dorsey, which demands him to make a counter showing when the re-trial motions come up for argument Wednesday, and which also indefinitely stays the execution of Leo Frank, which was scheduled for this morning between the hours of 11 and 1 o'clock.

An exciting phase of the re-trial application Thursday was a lively tilt that ensued between Attorneys Rosser and Arnold and Attorney Bill Smith, counsel for Jim Conley, when Mr. Arnold, in calling the names of a number of witnesses to be presented in their new trial movement, named Mr. Smith as one of the

proposed witnesses who, he understood, had refused to make an affidavit.

Mr. Smith, who was sitting a few feet in the rear of Mr. Arnold, arose instantly to his feet, saying to the court:

“I have not refused to make any affidavit.”

Mr. Arnold turned politely to the speaker, saying:

“I understand, Mr. Smith that Mr. J. P. Fife had said that you would not make the affidavit.”

“Mr. Fife is mistaken,” he answered, “make the affidavit.”

Whereupon Smith went to where Mr. Fife was sitting in the courtroom, bringing him before Judge Hill, asking this question:

“Did you ever state that I had refused to make such an affidavit?”

“No,” was the answer. At which the matter was ended.

Witnesses for Defense.

The witnesses to be called by the defense in the hearing next Wednesday were announced Thursday as E. A. Stephens, assistant solicitor general; Detective John Black, of police headquarters, a star witness for the state; Bill Smith, Conley’s attorney; Dr. Roy F. Harris, and Mary Rich, the woman witness who tells of having seen Conley emerge from the rear of the pencil factory at 2:15 o’clock on the day of the Phagan tragedy.

The statement of Dr. Harris will be one of the most important foundations for the fight of the defense. It relates to his opinion that the hair found upon the lathing machine in the pencil factory did not compare with strands taken from the head of the murdered girl.

Dr. Harris made an affidavit Thursday morning shortly after the motions had been filed. So did John Black, the detective, and Mr. Stephens and Bill Smith. They will be presented during the argument.

Attorney Tye's Motion.

The first clause of Attorney Tye's

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***WAY IS PAVED
FOR***

***CASE OF
LEO FRANK***

***Continued From
Page One.***

motion, which practically covers the entire document, is as follows:

“Because at the time said verdict was received and the jury trying the cause was discharged, the defendant, Leo M. Frank, was in the custody of the law and incarcerated in the common jail of Fulton County. He was not present when said verdict was returned and the said jury discharged, the defendant, Leo M. Frank, was in the custody of the law and incarcerated in the

common jail of Fulton County. He was not present when said verdict was returned and the said jury discharged, as he had the right of the law to be, and as the law required that he should be.

“He did not waive said right, nor did he authorize anyone to waive it for him, nor consent that he should not be present. He did not even know that said verdict had been rendered and said jury discharged until after the reception of the verdict and the discharge of the jury, and until after sentence of death had been passed upon him.”

Relative to the action of Attorneys Arnold and Rosser in waiving the presence of their client, the motion reads:

“Defendant did not give to Rosser or Arnold or to Haas any authority to themselves be absent nor to be absent himself, when said verdict was received and jury discharged, of which he was not aware until after sentence of death had been passed upon him.”

Denied Constitutional Right.

The document declares that Frank’s absence from the court at the time of the verdict was involuntary, and that he was denied the constitutional rights allowed him by the state and national laws. The motion is signed by Leonard Haas, Tye, Peeples & Jordan, H. A. Alexander and H. J. Haas.

Regarding the connection of Attorney Tye and his firm with the defense, Reuben R. Arnold and Luther Z. Rosser stated to press Thursday afternoon that in nowise do they appear as counsel in the motion filed by Mr. Tye.

“During the trial of Mr. Frank,” the two attorneys stated, “feeling against him on the part of some members of the public was so evident and pronounced as to greatly concern the trial judge for Frank’s safety in the event of his acquittal. During the trial, the judge called attention several times to the danger of having Frank present at the reception of the verdict.

“Nothing, however, was done about this until the last day of the trial, and just a few minutes before the jury was charged. The judge again expressed grave apprehension and fear of Frank’s safety should he be present at the reception of the verdict should be a verdict of acquittal. We, as two of Frank’s counsel, were present when the judge so expressed himself and the judge requested us to agree that Frank should not be present when the verdict of the jury was rendered, and that his counsel also should not be present. To this we agreed.

We Were Not Present.

“In the stress of excitement and in the multitude of things we had to do, it never occurred to us to mention our agreement with the court, either to Mr. Frank or to our associate counsel. As a matter of fact, neither our associate counsel nor Mr. Frank was present.”

“Because of our participation in the agreement with the judge, as counsel, we feel that we ought not to take part as attorneys in the motion to set the judgment aside upon the ground of Frank’s absence. The case is Leo Frank’s, not ours, and it is his life, alone, that is at stake. Frank made no agreement with the court and was asked to make none. If, as a result of what happened he has been deprived of his legal rights, no fair-minded man can complain when Frank asks the law to correct a wrong done him.”

“No agreement of this kind would ever have been made under sane and normal conditions. The agreement was made and carried out on both sides with the utmost good faith in promotion of what was thought to be in interest of Frank’s safety, and of public tranquility.”

Burns’ Report Nearly Ready.

Attorney Reuben R. Arnold said to a reporter for The Constitution last night that the report of Detective Burns would positively be submitted before next Wednesday. He said also that

Burns was expected back some time this week, possibly tomorrow.

“We do not know where Burns is at present,” he said. “He did not even tell us. Neither do we know what phase of evidence he is working on. All that we have got from him is the assurance that his report will be made before the arguments on the retrial motion.”

Solicitor Dorsey will return to Atlanta today from Valdosta, where he has been visiting. He was not present when the motions were filed before Judge Hill Thursday. His office was represented by E. A. Stephens, Dorsey’s assistant.

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**DAILY GRIST *from
the***

STATE’S

POLITICAL GRIND

**GOVERNOR SLATON IS
ADVOCATING**

**NO ONE WHO
IS RUNNING**

Governor John M. Slaton, candidate for the United States Senate, occupies the unique position in the great and glorious state of Georgia of advocating no one for governor or for any of the several fat political plums to be disposed of at the August primary. He is one of the very few men who is not worrying himself regarding the candidacy of someone. He is running his own race, and has no connection with any other race. He is, to use the words of the late Alexander Stephens, "totin' his own skillet."

Governor Slaton, on the eve of his departure for Reidsville, in Tattnall County, where he is scheduled to make an educational speech Friday night, expressed great satisfaction at the progress of his campaign thus far. Of the 25, or more, letters he has received this week, only four were at all adverse. The others breathed the spirit of enthusiasm in a rare degree for this early stage of the game.

At the banquet at the Hotel Ansley Wednesday night the county commissioners from practically every county in the state gave him the most enthusiastic reception. He was invariably referred to as "Senator Slaton." He was particularly gratified at this reception for the reason that one of the longest speeches he ever made in the legislature was that delivered in 1903 advocating placing county convicts on the public roads. This speech was printed in The Constitution in full in July, 1903.

INTERESTING SITUATION ARISES

IN BIBB COUNTY POLITICS

An interesting situation has arisen in the politics of Bibb County, and considerable gossip is going the rounds in regard to

it. The name of Judge Nat E. Harris has been frequently mentioned as a possible or probable candidate for governor, and he has been warmly urged to make the race. Should he consent, he would, in all probability, be the last Confederate Veteran to enter such a contest in the state of Georgia. Judge Harris has a large and warm personal following, and is a man of delightful personality. For many years he has been closely identified with the industrial interests of Macon, and is prominent in church work.

From the camp of Thomas S. Felder, candidate for senator, there appears to have arisen a protest over the boom which has been launched in behalf of Judge Harris, the feeling being that two candidates for office from the same city would not stand as good show of election as if only one were running.

Friends of Judge on the other hand, feel that, on account of his splendid civic record, he should be given the undivided support of his home town and county, and that the ambitions of no one should stand in his way.

ACTION OF COBB COUNTY COMMITTEE

BRINGS STILL ANOTHER PROTEST

Anent the action of the Cobb County Executive Committee in passing resolutions asking Governor Slaton to resign, in order that the Frank case might not come up to him for official action. The Ocilla Star, of recent date, has the following to say under the caption of "Indefensible Politics;"

"While we are not prepared to espouse the candidacy of Governor Slaton for the Senate, and have never been a partisan of his, we do not hesitate to condemn the action of the Democratic Executive Committee of Cobb County in calling for the

resignation of the governor, alleging that in their opinion he was holding on to the governorship so that he might be able to pardon Leo M. Frank."

"It is carrying matters entirely too far to condemn a man for what you fear he is going to do. And besides, this resolution, which Newt Morris is said to have fathered was introduced and passed as politics, pure and simple. Little real concern for the fate of Frank was really felt. It was an underhand job at a man who has made good as governor."

"With fair-minded men (And the majority in Georgia are fair-minded) this buncombe will react against the men who perpetrated it. It was, of course, intended to hurt Slaton. As a matter of fact, it calls for a defense from fair people who do not follow him."

"The authors of this ill-advised resolution doubtless wish to help the candidacy of some other man. We believe that any candidate with such fool friends will be hurt by them."

RAINEY ANNOUNCES TO SUCCEED

HIMSELF ON PRISON COMMISSION

E. L. Rainey will no doubt be nominated to succeed himself as prison commissioner. He was appointed to succeed the late Wiley Williams, of Columbus, and has made an excellent record. Mr. Rainey represented Terrell County in the legislature for five years, was superintendent for the second Georgia district of the last census, and served as a member of the board of trustees of the state sanitarium when appointed on the prison commission.

In his formal announcement to succeed himself, Mr. Rainey says:

“During the time I have been a member of the commission I have found that the offices give opportunities to the people of the state in a way that commands the best talents I possess. My duties have taken me practically all over the state, and I have studied with considerable interest the many problems which confront a prison commissioner.

“Our present system is not perfect, and may never be, but we are striving to give the people the best results possible under the laws and conditions as they exist. While the office brings responsibilities and duties that are sometimes onerous, I have become interested in the work, and, if the people will

E. L. RAINEY

accord to me the customary indorsement of election to a full term, I shall give them my best efforts, and pledge myself to devote my time and whatever talents I possess to the discharge of my duties.

“The board, as now constituted, has one member from North Georgia, one from Middle Georgia and one from South Georgia. I come from that great section of Georgia which is rapidly developing, and where a large part of our convicts are employed in working the public roads. I believe, other things being equal, that our section of the state should be represented on the prison commission.”

LIVELY CONTESTS IN PROGRESS

FOR FLOYD COUNTY OFFICES

Rome Ga., April 16.—(Special.)—The entries for the Floyd County primary, which will be held on April 28, will close tomorrow, and all candidates whose names are to appear on the official ballot must enter and pay their expenses before that time.

Lively contests are in progress for many of the county offices. One candidate who, it appears, will have no opposition, however, is Judge W. J. Nunnally, one of the present Floyd County representatives in the legislature. He is seeking the judgeship of the City Court of Floyd County, and will probably be unopposed. Judge John H. Reese, who has held the position for the past four years, will voluntarily retire to private life at the expiration of his term, on October 1, 1915.

Two other unopposed candidates are D. W. Simmons, for clerk of the superior court, and T. B. Owens, for county treasurer.

BIG REGISTRATION IN FRANKLIN; CANDIDATES FAST ANNOUNCING

Lavonia, Ga., April 16.—(Special.)—The Franklin County primary will be held on August 19 along with the state primary. Since the date for the primary has been fixed, there is a likelihood of a stir in political circles around here.

Colonel A. N. King has announced his candidacy for representative. Dr. T. B. Bonner has announced for the Senate from the thirty-first district. Dr. Bonner lives in Franklin County. Candidates are out for all the other county offices, which insures a lively campaign.

Considerable interest is attached to the probable outcome of the race for governor and the race for Senate. Franklin county is

thoroughly democratic, and the people have a way of deciding for whom they will vote, and going to the polls and casting their votes accordingly. Although Franklin is numbered among the small counties in the state, there are on the registration books of the county 3,071 names of voters.

Congressman Tribble will have no opposition in his race for congress this time. Some opposition was mentioned several weeks ago, but did not materialize.

BERRIEN COUNTY VOTERS ASK THOMAS TO ENTER THE RACE

Nashville, Ga., April 16.—(Special.)—Politics is booming in Berrien county. There are 3,500 registered voters.

A strong indorsement of Judge Thomas for governor is being forwarded to Valdosta, urging him to become a candidate.

FENCE OR NO FENCE ELECTION TO BE HELD IN THOMAS COUNTY

Thomasville, Ga., April 16.—(Special.)—In compliance with the petition of a number of the voters of the county, a “fence or no fence” election will be called for some time in July to decide what stand Thomas county will take in the settlement of this matter.

For some time past there has been a good deal said and written by the citizens of the county in regard to whether or not

there should be a stock law, or what its advantages would be, and it will be decided at the polls. It is understood that the county is a good deal divided in sentiment, some sections favoring the law and others opposing it; but there is no doubt that the sentiment in its favor has grown very much within the last year, and it stands a good chance to carry.

ELBERT COUNTY VOTERS LIKE IDEA OF HOLDEN FOR GOVERNOR

Elberton, Ga., April 16.—(Special.)—The suggestion of Judge Horace M. Holden for governor has met with unusually warm support in this county and section. He is very popular in his old judicial circuit. His friends are urging him to get into the race.

His disposition and past record, without any partisanship, make him a formidable candidate should he enter the race.

HON. M. L. BRITTAIN INDORSED

BY THE OCONEE COUNTY BOARD

Watkinsville, Ga., April 16.—(Special.)—The Oconee county board of education has heartily indorsed Hon. M. L. Brittain, state superintendent of education, for re-election to this important position. His administration of the affairs of that office is highly commended. The board at a recent meeting passed the following resolution unanimously:

“Resolved, That we note with gratitude the splendid efforts of Hon. M. L. Brittain, state school superintendent, for the advancement of our schools and educational interests; indorse heartily his administration of the affairs of this important office, and assure him of our hearty support in the coming primary.”

The members of the board present were W. S. Elder, president; James M. Mayne, L. C. Crow and W. W. Jordan. J. W. McWhorter is superintendent of the schools of the county.

M'DUFFIE REGISTRATION BOOKS

SHOW INCREASE OF 200 NAMES

Thomson, Ga., April 16.—(Special.)—McDuffie county's registration books closed April 7, the total registered vote being 930. About 200 more names are registered than ever before.

Hon. J. G. Stovall has announced for re-election to the house of representatives.
